

**Request for Proposals
City of Tillamook
Water Rural Transmission Line Replacement Project (Project)**

**Due January 17, 2023, 2:00 pm
210 Laurel Avenue, Tillamook, OR 97141**

Contact: Shawn Burgé
Public Works Director: publicworks@tillamookor.gov

Section 1.0 SOLICITATION INFORMATION AND REQUIREMENTS

1. SUMMARY PROJECT OVERVIEW

The City of Tillamook's Water Treatment Plant is located about 7 miles southeast of the City center and serves 11 outlying Water Districts. The City is looking for an engineering analysis and design to replace the water rural transmission line from the Water Treatment Plant to the City's water reservoirs located east of Highway 101. See the attached map, Figure 1. The City is seeking one (1) professional services Consultant to provide engineering services for the Project. Design work is anticipated to occur in 2022-2023, with construction in 2023-2025.

In the early 1900's the water sources were identified, developed and transmission lines constructed to the City. In 1942, the US Navy built a base at what is now the Port of Tillamook Bay (POTB). The Navy built the airport runway on top of the City's water transmission lines. Portions of the current water transmission lines were in built in 1928 and have long exceeded their life expectancy. The transmission lines are unrestrained, which makes them extremely vulnerable to catastrophic failure. The Oregon Coast is subject to a Cascadia Subduction Zone Earthquake (CSZ), City staff believes that the water transmission lines will fail under the runways during a CSZ earthquake. Regional and State Emergency Plans include emergency aid and personnel to land at the POTB airport to support response and recovery.

The City's Water Master Plan has identified a couple of alternative routes, shown on Figures 5.1 to 5.1D. However, the City would like the Consultant that is awarded this contract to take a fresh look at alternatives and develop a decision-making matrix for the

City's team to evaluate each alternative route and to be able to make the best decision for the City.

The outcome of this project is to develop a final alternative with construction documents ready to bid for contractors and to provide construction management for the project.

A City goal is to minimize any property acquisition and try to keep the new water mains in public Right-of-Ways, easements, or City owned property.

Solicitation Schedule:

Advertise and Issue RFP	December 7 and 13, 2022
Question Submittal Deadline	January 10, 2022 by 5:00 PM
Replies Issued	January 17, 2022, by 3:00 PM
Deadline for Submittal of Proposals	January 17, 2023, by 2:00 PM
Interviews	Week of February 6, 2023
Initial evaluation scores announced	February 14, 2023
Invited price information deadline	February 16,, 2023
Project Awarded	February 20, 2023
Execution of Agreement with Firm	TBD

Project Phases:

Phase 1 – Alternative Analysis that leads to a final route from the Water Treatment Plant to the water reservoirs in town, estimated completion Spring 2023

Phase 2 – Design Acceptance Package, estimated completion Fall 2023

Phase 3 – Final Design and Bidding Assistance, estimated completion February 2024

Phase 4 – Construction Engineering, estimated completion Fall 2025

Funding Sources: American Rescue Plan Act of 2021

1. QUESTIONS AND CLARIFICATIONS

- 1.1. Proposers must register with the City of Tillamook, by emailing publicworks@tillamookor.gov, to receive addendum or other RFP information.
- 1.2. Proposer questions: All inquiries, relating to the RFP, including process, administration, deadline or award, or technical specifications must be submitted in writing via email to the contact: publicworks@tillamookor.gov. **Failure to follow these contact requirements may result in Proposal rejection by the City.**
- 1.3. Emails will be answered Monday through Thursday. All questions must be received not later than 5 business days prior to the Proposal submission deadline.

- 1.4. Addenda: Answers to questions the City receives and that the City, in its sole discretion, determines are substantive and provides new information, will be issued as official Addenda to this RFP. When appropriate, as determined by the City in its sole discretion, revisions, substitutions, or clarifications of the RFP will be issued as Addenda to this RFP. Changes or modifications to this RFP will be binding on the City only if in the form of written Addenda issued by the City. City will provide any Addenda to all firms who have registered with the City who has received this RFP. Receipt of all addenda must be acknowledged in submitted proposals.
- 1.5. Proposers are directed to the protest procedures as set forth in City Rule 137-048-0240.

2. PUBLIC RECORDS

All proposals submitted are the property of City, thus subject to disclosure pursuant to the public records law, as qualified by ORS 279C.107. Accordingly, proposals received and opened shall not be available for public inspection until after City has awarded and executed the attached Contract. Thereafter, except for information marked "Proprietary," all documents received by City shall be available for public disclosure. City will attempt to maintain the confidentiality of materials marked "Proprietary" to the extent permitted under the Oregon Public Records law. **Identifying the Proposal in whole as exempt from disclosure is not acceptable.** If Proposer fails to identify the portions of the Proposal that Proposer claims are exempt from disclosure and the authority used to substantiate that claim, Proposer is deemed to waive any future claim for non-disclosure of that information.

3. SUBMITTAL REQUIREMENTS

- 3.1. Proposal Submission deadline: The City will not accept Proposals submitted after the Proposal Submission deadline indicated on the first page of this RFP. Late Proposals will be returned unopened. **Proposals must be received at the correct address on or before the due date and time indicated on page 1.** The City is not responsible for and will not accept mis-delivered Proposals. Emailed and/or faxed proposals will be rejected as non-responsive.
- 3.2. Delivery Address: Hand-deliver proposals to the City's Water Utility Desk located at 210 Laurel Avenue, Tillamook, Oregon 97141., or mail proposals to Attention: Shawn Burgé, at the above address.
- 3.3. Non-Discrimination Policies: Include written affirmation that Proposer has a policy of nondiscrimination in employment because of race, age, color, sex, religion, national origin, mental or physical handicap, political affiliation, marital status or other protected class, and has a drug-free workplace policy.
- 3.4. Insurance: Include proof of insurance for a minimum of \$2 million professional liability insurance, plus \$2 million comprehensive and automobile liability insurance. Proof of coverage by Workers' Compensation Insurance or exemption.

- 3.5. Exceptions: Any and all exceptions to this RFP, including the attached Contract, shall be noted on a Section entitled “Exceptions” and submitted with Proposer’s proposal.
- 3.6. Availability: Confirmation that the Proposer will make available the necessary personnel for this work. This should include the proximity of personnel to the City, and affirmation that such personnel can respond to City inquiries and/or be onsite within a maximum of 24-hours.
- 3.7. A Proposer may be requested by the City to provide pricing policies, rates and other cost information (collectively, Price Information). Price Information shall not be submitted as part of a proposal, but shall be submitted only when requested by City. Proposers should refer to Section 2.5 for information on Price Information and associated evaluation procedures.
- 3.8. Submittal of a proposal indicates a proposer’s intent to execute the attached contract terms and be bound thereby.
- 3.9. Format for Proposals and page length limitations: Submitted Proposals must be organized in accordance with the list of Scoring Criteria categorized in Section 2.5. **Proposals shall not exceed 14 pages**, excluding a cover letter, resumes, tabs, or indexes.

One page is defined as: one side of a single 8 and ½” x 11” page, with a 12-point minimum font size for the substantive text and 11-point font for resumes. Proposers may use their discretion for the font size of other materials that do not include substantive text (e.g. headings, graphics, picture or graphics captions, and org charts.).

4. **CONTACT INFORMATION**

Per Section 1.2.2, direct all inquiries regarding the Project and this RFP to:

City of Tillamook
210 Laurel Avenue
Tillamook, OR 97141
Phone: (503) 842-3445
Email: publicworks@tillamookor.gov

5. **APPENDIX**

The following appendices are included in this RFP:

Appendix A: Architectural/Engineering Services Contract

2.0 **PROPOSAL EVALUATION AND CONSULTANT SELECTION**

2.1 **Evaluation:** The City’s selection team will review the proposal that are delivered on time independently, score and rank the proposals according to the scoring criteria set forth in Section 2.5.

The outcome of the Evaluation process may, at the City’s sole discretion, result in;

- a. Notice to Proposer(s) of selection or rejection for Contract negotiation and possible award.

- b. Further steps to gather additional information for evaluation (e.g. checking references, notice of placement on an interview list, requesting clarification); or
- c. Cancellation of the RFP and either re-issuance of the RFP in the same or revised form or no further action by the City with respect to the RFP.

The City reserves the right to reject any and all Proposals and reserves the right to cancel this RFP at any time if doing either would be in the public interest as determined by the City. The City is not liable for any costs a Proposer incurs while preparing or presenting the Proposal or during further evaluation stages. All Proposals will become part of the public file without obligation to the City.

2.2 Interviews/follow up: The City may conduct interviews/follow up questions. If interviews/follow up questions are conducted, the following will apply:

- a. The number of Proposers selected for interviews/follow-up questions is at the sole discretion of the City.
- b. A minimum of 3 evaluators shall score the interviews/follow up questions;
- c. Interview/follow up question scores (up to a maximum of 50 points) will be combined with the other criteria scores to arrive at a total score. The total score will be ranked to determine the apparent successful Proposer.
- d. Interviews normally require physical attendance at the City's offices; however, the City may elect to conduct interviews via virtual conference. Further details will be included with notification of time and date of interviews, if conducted.

2.3 References:

Proposers must provide 3 references for projects where Proposer provided services relevant to the scope of services described in this RFP. References may be checked regarding Proposer's past performance and to determine if they are supportive of the Consultant's ability to successfully complete the Services described in this RFP. Failure to provide complete and/or accurate information in a Proposal or reference may be cause for Proposal rejection.

References will be scored as a pass/fail.

2.4 City Questions:

The City of Tillamook may require any clarification desired to understand a Proposer's Proposal. Any necessary clarifications or modifications which are in the best interest of the City may be made before the Proposer is awarded a contract, and some or all of the clarifications or modifications may become part of the final contract.

2.5 Scoring Criteria

Proposal scoring will be based on the criteria stated in the subsections below. The Proposer must describe how Proposer meets the requirements that are specified in this RFP as related to the scoring criteria below. Be clear and concise.

Phase I:

a. Specific Experience of Key Staff (Max 25 points): Provide information on the proposed Project Manager and proposed key staff for the following disciplines; Project Manager, Design Lead, Utilities Coordinator, Right-of Way Lead, Federal Requirements Lead, Environmental Lead, and Construction Manager. Key Staff resumes are not included in the Proposal page limit identified for this RFP; however, a maximum of 10 resumes may be submitted.

b. Project Approach (Max 50 points): Given the Project information provided with this RFP, describe your approach for this project to meet the City's Project deliverables/objectives. Describe what you believe are the most critical elements of this Project that the design team must address for a successful outcome. Please describe your approach to addressing the most critical elements of this Project. Experience working on the Oregon Coast and/or inclement weather, ODOT right-of-way, state/federal agencies pertaining to wetland, and other environmental concerns is preferred. Describe your approach to dealing with potholing and utility locates and conflicts. Describe your approach to keeping customers in water service. Provide GIS mapping of new water lines and other utilities in the approximate location of new water mains.

c. Experience with Federal and State funds (Max 20 points): This project is being funded with federal funds. Describe your experience with projects with federal or state funding; Section 3 reports, contract requirements, property acquisition, NEPA compliance, etc.

d. Project Examples (Max 25 points): Provide at least three (3) project samples comparable to the requested services performed by your firm within the last five (5) years. For the sample projects:

- Describe their relevance to the Project and Services included in this solicitation, including descriptions of how any outstanding issues and project constraints were addressed and resolved, and how many change orders.
- Include a brief description of project type, location, size, duration and objectives; a list of key project staff and their roles; tasks performed by the Proposer to fulfill the project objectives; the project budget, and whether the schedule and budget were met.
- Include two (2) reference contacts for each project with valid contact information.

e. References: (pass/fail): See Section 2.3

Phase II – Pricing (Max 30 points):

A Proposer may be requested by the City to provide pricing policies, rates and other cost information (collectively, Price Information). Price Information shall not be submitted as part of a proposal, but shall be submitted only when requested by City.

The City will conduct a Phase II Evaluation, as follows:

- a. The submittal requirements for Phase II only apply to a Proposer that receives a request for Price Information following the City's evaluation and scoring of Proposals from Phase I.
- b. The Price Information may receive up to a maximum of 30 points, giving it a weight of 15 percent in the total evaluation of each Phase II Proposer.

c. If requested to provide Price Information, a Proposer must submit the Price Information to the City within five (5) business days of the date of the City’s request. The City may disqualify a Proposer for a late submission of the Price Information.

d. Pursuant to ORS 279C.110(5)(c)(A), the Price Information shall consist of:

i. A schedule of hourly rates that the Proposer will charge for the work of each individual or each labor classification that will perform the professional services required for Project, in the form of an offer that is irrevocable for not less than ninety (90) days after the date of the proposal; and

ii. A reasonable estimate of hours that Proposer will require to perform the Project’s professional services.

e. Pursuant to ORS 279C.110(5)(c)(B), the City requests the Price Information also include:

i. A description of each task that the Proposer understands as comprising Project professional services;

ii. A list of each individual or labor classification that will perform each Project task, together with the hourly rate that applies to the individual or labor classification; and

iii. A list of expenses, including travel expenses, that the Proposer expects to incur in connection with completing Project’s professional services.

f. A Phase II Proposer requested to provide Price Information may withdraw from consideration for this RFP if the Proposer does not wish to provide a price proposal.

g. The City may interview any Phase II Proposer, but it is not required to interview all Proposers. In an interview the Proposer may be allowed to expand upon information contained in the pricing proposal.

SUMMARY OF SCORING CRITERIA	
	MAXIMUM SCORE
PHASE I	
a. Specific Experience of Key Staff	25
b. Project Approach	50
c. Experience with Federal and State Funds	20
d. Project Samples	25
e. References	Pass/Fail
Total or Subtotal Score for Proposal	120
Interviews/Follow-up Questions	50

Phase I Subtotal	170
PHASE II	
Pricing Information 30	
Maximum Possible Total Score. 200	

2.6 AWARD SUBMITTAL REQUIREMENTS

a. Once the City of Tillamook has a first choice after proposals and/or interviews, the City will enter into negotiations for Scope and Budget under a qualification-based solicitation (QBS) process, which includes consideration of price information, as allowed for contracts anticipated to exceed \$100,000 pursuant to ORS 279C.110(5). Phase I will consist of an initial evaluation of all proposers and select three of the most qualified candidates without regard to the price of the services. If the City does not cancel the RFP, only after selecting up to three of the most qualified candidates, the City may request Price Information from those top-ranked Proposers, based upon the total score from the initial evaluation.

2.7 The City intends to select the highest scoring responsive responsible Proposer, which will be based upon the total from both Phase I and Phase II (a possible maximum total of 200 points). After the review committee scores and ranks the Proposals, the Public Works Director will make a written recommendation on Awardee selection to the Council. The Public Works Director will document the reasons for their recommendation. The Council will make the final decision on selection of the most suitable candidate for City’s Project. All Proposers will be notified of the Council’s decision.

If the City and a selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the City, the City shall, either orally or in writing, formally terminate negotiations with that selected candidate. The City may then negotiate with the next most qualified candidate. The negotiation process may continue in this manner through the identified top three candidates until an agreement is reached or the City terminates the RFP.

It is the desire of the City to have a new engineering contract in place no later than March 15, 2023.

3.0 STATEMENT OF WORK (or) SUMMARY OF TASKS DELIVERABLES AND SCHEDULE
Phase 1 – Alternative Analysis of Water Transmission Main Route; estimated completion Spring 2023.

Consultant shall prepare and submit an Alternative Analysis for the new water transmission line alignment. The levels of detail that may be required for the Alternatives Analysis are:

- Surveying
- Water pipe material choices
- Work necessary to obtain environmental clearance; creek/river crossings, wetlands, etc.
- Right-of-way or Easements
- Utility impacts
- Seismic issues
- Identification of necessary design exceptions
- Traffic impacts
- Engineer's opinion of probable costs
- Alternative Analysis Decision matrix and City team workshop
- Prepare alternative analysis report narrative along with recommendations

The Consultant shall schedule, and lead a minimum of three (3) workshops with the City team for decision making of the Alternatives for a final route. The Consultant shall also prepare an alternative analysis report narrative.

Phase 2 – Design Acceptance Package (DAP); estimated completion early Fall 2023

- Prepare DAP design sheets on 11"x17" detailing water transmission alignment, typical sections, right-of-way/easement and utility impacts
- Prepare water transmission pipe type, size and location
- Prepare all required permits for environmental clearances
- Prepare traffic control plans
- Prepare erosion and sediment control plans
- Prepare preliminary Engineer's cost estimate for one (1) alternative
- Prepare a utility pothole locate plan and cost estimate including the use of hydro-excavators/vac-trucks
- Prepare a plan to keep customers in water service

Phase 3 – Final Design and Bidding Assistance

Consultant shall provide all engineering services required to prepare a bid package in accordance with all state and federal agencies including Oregon Health Authority and ODOT's policies and procedures.

Consultant shall provide bidding assistance services during the final Plans, Specifications, and Cost estimates (PS&E) process and the advertising period.

Phase 4 – Construction Engineering Phase

Consultant shall provide construction engineering services and services to meet the Business Oregon requirements for federal funds, including but not limited to:

- Provide construction project management and contract administration and documentation for construction of the project.
- Conduct Pre-Construction conference with Construction contractor, City Team, Grant Administrator, Port of Tillamook Bay, and any affected utilities.
- Review and approve (when appropriate) all required construction shop drawings, plans and submittals.
- Perform on-site construction monitoring and observation
- Provide written notification to the City at the first sign of any delays.
- Provide Quality and Quantity documentation in compliance with City and State policies, procedures, and manuals.
- Provide utility coordination
- Prepare documentation and recommend approval to City of construction contract change orders
- Prepare pay notes and provide data for contractor payments
- Provide detailed updates on Consultant and Contractor's progress
- Perform environmental and permit compliance monitoring during construction of the project.
- Perform project post-construction monumentation and associated duties and products.
- Complete and submit as-built plans and drawings in GIS format that's acceptable to the city.
- Prepare and submit final documentation to the City.
- Provide a plan to keep customers in water service in accordance to OHA standards.

**City of Tillamook
is an Equal Opportunity/Affirmative Action Employer
Women, Minorities and Disabled Persons
are encouraged to apply**

THIS RFP IS NOT AN IMPLIED CONTRACT AND MAY BE MODIFIED OR
REVOKED WITHOUT NOTICE.

APPENDIX A

THIS IS A DRAFT CONTRACT FOR EXAMPLE ONLY

**CITY OF TILLAMOOK
ARCHITECTURAL/ENGINEERING SERVICES CONTRACT**

This Contract is by and between the City of Tillamook (“City”) and _____ (“Architect/Engineer”) for the performance of architectural/engineering services for City.

A. RECITALS

City is in need of retaining the services of a qualified architect/engineer to design and oversee the Water Rural Transmission Line Replacement Project located in Tillamook, Oregon (“Project”). This project covers areas outside of the city’s limits and crosses over outlying water district lines and boundaries and other private and public entities.

On _____, 2022, the City awarded this Contract to _____, based upon its proposal dated _____, 2022.

B. CONTRACT EXHIBITS

The following exhibits are hereby incorporated by reference into this Contract:

- Exhibit A – Scope of Work
- Exhibit B – Oregon Architect/Engineer Public Contracting Code Requirements
- Exhibit C – City’s Request for Proposals for Architectural/Engineering Services
- Exhibit D – Architect/Engineer’s Proposal and Schedule of Rates and Charges
- Exhibit E – ARPA/ SLFRF Federal Contract Clauses

In the event of a conflict between this Contract and its Exhibits, the terms of this Contract shall prevail, followed by Exhibit B, then Exhibits A, C and D, in that order.

C. CONTRACT

1. Term

This Contract shall commence upon execution, and continue through final completion of the Project, but no later than _____, 2025.

2. Scope of Work

Architect/Engineer shall provide all services and deliver all materials as specified in the attached Exhibits, which are hereby incorporated into this Contract by this reference, and as may be described by future addenda to this Contract.

6. Indemnification

Architect/Engineer shall indemnify, hold harmless, and defend City and its representatives, officers, directors, and employees from any loss or claim made by third parties, including legal fees and costs of defending actions or suits resulting directly or indirectly from Architect/Engineer's negligent performance and/or fault of Architect/Engineer, its employees, representatives, or subcontractors. If the loss or claim is caused by the joint concurrent negligence or other fault of City and Architect/Engineer, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each.

Architect/Engineer shall defend City from claims covered under this section at Architect/Engineer's sole cost and expense until such time: (1) as an arbitration panel or a court of competent jurisdiction determines that City is liable in whole or in part for the loss or claim caused by City's negligence; or (2) until City and Architect/Engineer mutually agree to allocate the liability.

Architect/Engineer's indemnification obligations under this Section 6 shall survive the expiration or earlier termination of this Contract.

7. Insurance Requirements

7.1 During the term of this Contract, Architect/Engineer shall maintain, at its own expense, the following types of insurance in the following amounts:

- a. Comprehensive general liability insurance on Insurance Services Office (ISO) occurrence form CG 00 01, including coverage for premises operations, independent contractors, protected products, completed operations, contractual liability, personal injury, and broad form for property damage (including coverage for explosion, collapse, and underground hazards):

\$2,000,000 – each occurrence (bodily injury)
\$4,000,000 – general aggregate
\$2,000,000 – automobile
\$2,000,000 – property damage, contractual, etc.
\$2,000,000 – umbrella liability coverage

Coverage shall also include contractual liability coverage for the indemnity provided under this Contract. (Proof of coverage will be attached to this Contract).

- b. Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$1,000,000 per occurrence. (Proof of coverage will be attached to this Contract).
- c. Errors and Omissions insurance covering Architect/Engineer's liability arising out of negligent acts, errors or omissions in its performance of work or services under this Contract. Such policy will have a combined single limit of not less than \$2,000,000 per each claim, incident or occurrence for the term of the Project. Such policy will be on a claims made basis and will have an extended claims reporting period of six (6) years after final completion. (Proof of coverage will be attached to this Contract).
- d. The limits required in this Section 7.1 may be met with a combination of underlying and umbrella coverage.

- 7.2 Except as required in 7.1(c) above, if any of the above required insurance is arranged on a “claims made” basis, “tail” coverage will be required at final completion or termination of this Contract for a duration of two (2) years.
- 7.3 Policies shall provide that City, its Council, officers, representatives, employees, and agents will be included as an additional insured with respect to the coverages required in Section 7.1(a) and a waiver of subrogation against them shall be obtained for all coverages.
- 7.4 All coverages under Section 7.1 shall be primary over any insurance City may carry on its own.
- 7.5 City shall be solely responsible for any loss, damage or destruction to its own property, equipment, and materials used in conjunction with the work or services under this Contract if the loss, damage or destruction is due to the City’s negligence or fault.
- 7.6 All policies of insurance shall be issued by good, responsible companies with a rating acceptable to the City and that are qualified to do business in the State of Oregon.
- 7.7 Architect/Engineer shall furnish City with certificates of insurance evidencing all required coverages prior to commencing any work or services under this Contract. If requested by City, Architect/Engineer shall furnish City with executed copies of such policies of insurance. Architect/Engineer shall furnish City with at least 30 days’ written notice of cancellation of, or any modification to, the required insurance coverages. Failure to maintain any required insurance coverages in the minimum required amounts shall constitute a material breach of this Contract and shall be grounds for immediate termination of this Contract.

8. Workers’ Compensation

- 8.1 Architect/Engineer, its subcontractors, if any, and all employers working under this Contract are subject employers under the Oregon Workers’ Compensation Law and shall comply with ORS 656.017, which requires them to provide workers’ compensation coverage for all subject workers.
- 8.2 Architect/Engineer warrants that all persons engaged in Contract work and subject to the Oregon Workers’ Compensation Law are covered by a workers’ compensation plan or insurance policy that fully complies with Oregon law. Architect/Engineer shall indemnify City for any liability incurred by City as a result of Architect/Engineer’s breach of the warranty under this paragraph.

9. Hours of Employment

Architect/Engineer shall comply with all applicable state and federal laws regarding employment.

10. Assignment

Architect/Engineer may not assign any of its responsibilities under this Contract without City’s prior written consent, which consent may be withheld in City’s sole discretion. Architect/Engineer may not subcontract for performance of any of its responsibilities under this Contract without City’s prior written consent, which consent shall not be unreasonably withheld. Architect/Engineer’s assigning or subcontracting of any of its responsibilities under the Contract without City’s consent shall constitute a material breach of this Contract. Regardless of any assignment or subcontract, Architect/Engineer shall remain liable for all of its obligations under this Contract.

11. Labor and Material

Architect/Engineer shall provide and pay for all labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of all Contract work, all at no cost to City other than the compensation provided in this Contract.

12. Ownership of Work and Documents

All work performed by Architect/Engineer and compensated by City pursuant to this Contract shall be the property of City upon full compensation for that work performed or document produced to Architect/Engineer, and it is agreed by the parties that such documents are works made for hire. Architect/Engineer hereby conveys, transfers and grants to City all rights of reproduction and the copyright to all such documents. However, in the event City reuses or modifies any materials furnished to City by Architect/Engineer, without Architect/Engineer's involvement or consent, then Architect/Engineer shall not be responsible for the materials.

13. Termination or Suspension for Convenience

This Contract may be terminated by mutual consent of the parties upon written notice. In addition, City may terminate or suspend all or part of this Contract upon determining that such action is in the best interest of City by giving seven (7) days' prior written notice, without waiving any claims or remedies it may have against Architect/Engineer. Upon termination under this paragraph, Architect/Engineer shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination less previous amounts paid and any claim(s) City has against Architect/Engineer. Pursuant to this paragraph, Architect/Engineer shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract closeout costs actually incurred by Architect/Engineer. City shall not be liable for any costs invoiced later than thirty (30) days after termination unless Architect/Engineer can show good cause beyond its control for the delay.

14. Termination or Suspension for Cause

City may terminate or suspend this Contract effective upon delivery of written notice to Architect/Engineer, or at such later date as may be established by City, under any of the following conditions:

- 14.1 If City funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.
- 14.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 14.3 If any license or certificate required by law or regulation to be held by Architect/Engineer to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

15. Termination for Default

If the City fails to perform in the manner called for in this Contract or if the City fails to comply with any other provisions of the Contract, the Architect/Engineer may terminate this Contract for default after giving the City the notice and opportunity to cure required by this paragraph. Prior to termination for default, Architect/Engineer must give the City written notice of the breach and of the Architect/Engineer's intent to terminate. If City has not entirely cured the breach within fifteen

(15) days of the date of the notice, then Architect/Engineer may terminate the Contract at any time thereafter by giving a written notice of termination.

If Architect/Engineer fails to perform in the manner called for in this Contract or if Architect/Engineer fails to comply with any other provisions of the Contract, City may terminate this Contract for default. Termination shall be affected by serving a notice of termination on Architect/Engineer setting forth the manner in which Architect/Engineer is in default. Architect/Engineer shall be paid the Contract price only for services performed in accordance with the manner of performance as set forth in this Contract.

16. Remedies

In the event of breach of this Contract the parties shall have the following remedies:

- 16.1 Any suspension of performance under Sections 13 or 14 of this Contract constitutes a temporary stoppage of performance of the Contract and does not constitute a termination of the Contract under those Sections. In the event that the condition(s) causing the suspension are rectified and suspension is no longer required, the Parties will take all actions necessary to reactivate performance of the Contract within seven (7) calendar days from written notice to resume. In the event that the City determines that the conditions causing suspension of the Contract are not likely to be rectified in a reasonable amount of time, the City retains the right to terminate this Contract, pursuant to Sections 13 or 14. In the event of a suspension of performance pursuant to Sections 13 or 14, Architect/Engineer agrees to remain contractually obligated to perform the Services under this Contract for the same compensation set forth in Section 3, "Compensation," of this Contract until project completion. If the Contract is reactivated and Architect/Engineer is required to perform under this Contract beyond this date or such other time period agreed to by the Parties, the Parties may negotiate updated hourly rates for Architect/Engineer and any Consultants and amend this Contract accordingly.
- 16.2 If terminated under paragraph 15 by City due to a breach by Architect/Engineer, City may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Architect/Engineer shall pay to City the amount of the reasonable excess.
- 16.3 In addition to the above remedies for a breach by Architect/Engineer, City also shall be entitled to any other equitable and legal remedies that are available.
- 16.4 If City breaches this Contract, Architect/Engineer's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Architect/Engineer is entitled.
- 16.5 City shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.
- 16.6 Upon receiving a notice of termination, and except as otherwise directed in writing by City, Architect/Engineer shall immediately cease all activities related to the services and work under this Contract. As directed by City, Architect/Engineer shall, upon termination, deliver to City all then existing work product that, if the Contract had been completed, would be required to be delivered to City.

17. Nondiscrimination

During the term of this Contract, Architect/Engineer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

18. Governing Law; Jurisdiction; Venue

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between City and Architect/Engineer that arises from or relates to this Contract which results in litigation shall be brought and conducted solely and exclusively within the Circuit Court of Tillamook County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States City Court for the District of Oregon. ARCHITECT/ENGINEER BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing herein shall be construed as a waiver of City's protections under the Oregon Tort Claims Act.

19. Compliance with Laws and Regulations

Architect/Engineer shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services under this Contract. Without limiting the generality of the foregoing, Architect/Engineer expressly agrees to comply with: (i) 659A.142 (ii) all regulations and administrative rules established pursuant to the foregoing laws; and (iii) City's performance under this Contract is conditioned upon Architect/Engineer's compliance with all applicable provisions of the Oregon Public Contracting Code, as more particularly set forth in Exhibit B and incorporated herein by this reference. Architect/Engineer, its subconsultants, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. Architect/Engineer shall adhere to all safety standards and regulations established by City for work performed on its premises or under its auspices.

20. Experience, Capabilities and Resources

By execution of this Contract, Architect agrees that:

- 20.1 Architect/Engineer is an experienced architectural firm having the skill, legal capacity, and professional ability necessary to perform all the services required under this Contract and to design or administer any work within the scope and complexity contemplated by this Contract.
- 20.2 Architect/Engineer has the capabilities and resources necessary to perform the obligations of this Contract.
- 20.3 Architect/Engineer is familiar with all current laws, rules, and regulations which are applicable to the design and construction of work which may fall within the scope of this Contract, and that all drawings, specifications, and other documents prepared by Architect/Engineer shall be prepared in accordance with the standard of care of other professionals performing similar services under similar conditions and in an effort to accurately reflect and incorporate all such laws, rules, and regulations.

21. Drawings, Specifications and Other Documents

Architect/Engineer hereby agrees that it will, in a manner consistent with its standard of care defined above in Section 20, prepare all drawings, specifications, and other documents pursuant to this Contract so that they are complete and that any project, if constructed in accordance with the intent established by such drawings, specifications, and other documents, shall be structurally sound and a complete and properly functioning facility. As used in this Section 21:

- 1) "structurally sounds" means that the facility has been designed and engineered to meet the

- minimum code standard required of this project by the authority having jurisdiction; and
- 2) "complete and properly functioning facility" means that the facility has been designed, utilizing the Standard of Care, to meet industry standards for similar facilities in a similar location.

22. Errors and Omissions

Architect/Engineer shall be responsible for correcting any errors or omissions in the drawings, specifications, and/or other documents which deviate from the standard of care set forth in Section 21. Architect/Engineer shall correct at no additional cost to City any and all such errors and omissions in the drawings, specifications, and other documents prepared by Architect/Engineer or its subconsultants. Architect/Engineer further agrees to assist City in resolving problems relating to any project designs or specified materials. Architect's warranties and obligations under Sections 20-22 of this Contract shall survive the expiration or earlier termination of this Contract.

23. Contract Performance

Architect/Engineer shall at all times carry on the services diligently, without delay and punctually fulfill all requirements herein. Architect/Engineer shall not be liable for delays that are beyond Architect/Engineer's control. Contract expiration shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any breach of Architect/Engineer's warranties or a default or defect in performance by Architect/Engineer that has not been cured. Architect/Engineer agrees that time is of the essence under this Contract.

24. Access to Records

For not less than five (5) years after the Contract expiration and for the purpose of making audit, examination, excerpts, and transcripts, City, and its duly authorized representatives shall have access to Architect/Engineer's books, documents, papers, and records that are pertinent to this Contract. If, for any reason, any part of this Contract, or any resulting construction contract(s) is involved in litigation, Architect/Engineer shall retain all pertinent records for not less than five (5) years or until all litigation is resolved, whichever is longer. Architect/Engineer shall provide full access to these records to City, and its duly authorized representatives in preparation for and during litigation.

25. Representations and Warranties

25.1 Architect/Engineer represents and warrants to City that:

25.1.1 Architect/Engineer has the power and authority to enter into and perform this Contract;

25.1.2 When executed and delivered, this Contract shall be a valid and binding obligation of Architect/Engineer enforceable in accordance with its terms;

25.1.3 Architect/Engineer shall, at all times during the term of this Contract, be duly licensed to perform the services, and if there is no licensing requirement for the profession or services, be duly qualified and competent; and

25.1.4 The services under this Contract shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions.

25.2 The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

26. City Obligations

- 26.1 City shall provide full information in a timely manner regarding requirements for and limitations on projects and work tasks. With regard to subcontractor liens, City shall furnish to Architect/Engineer, within fifteen (15) days after receipt of a written request, information necessary and relevant for Architect/Engineer to evaluate, give notice of, or enforce lien.
- 26.2 City shall establish and update, if necessary, overall project budgets, including Architecture/Engineering and construction costs.
- 26.3 City shall furnish the services of consultants, including geotechnical architects/engineers, when such services are requested by Architect/Engineer, reasonably required by the scope of a project, and agreed to by City.
- 26.4 City shall furnish all testing as required by law or the Contract documents.
- 26.5 City shall furnish all legal accounting, auditing and insurance services as necessary for projects to meet the City's needs and interests, after Architect/Engineer has performed requisite project management and oversight duties.
- 26.6 City shall provide prompt written notice to Architect/Engineer if City becomes aware of any fault or defect in a project, including any errors, omissions or inconsistencies in Architect/Engineer's design or performance under the Contract.
- 26.7 City shall pay Architect/Engineer in accordance with paragraph 3 and Exhibit C of this Contract, upon receipt of Architect/Engineer's submission of monthly invoices, and satisfactory progress and performance made in accordance with the scope of work. Payments shall reflect work completed, or progress made on a project to date, on a pro rata basis.
- 26.8 City shall report the total amount of all payments to Architect/Engineer, including any expenses, in accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.
- 26.9 City shall guarantee access to, and make all provisions for Architect/Engineer to enter upon public and private property necessary for performance of the Scope of Work over which City exercises control.
- 26.10 Extra work or work on contingency tasks is not permitted unless authorized by the City in writing. Failure of Architect/Engineer to secure written authorization for extra work shall constitute a waiver of all rights to an adjustment in the Contract price or Contract time.

27. Arbitration

- 27.1 All claims, disputes, and other matters in question between the City and Architect/Engineer arising out of, or relating to this Contract, including rescission, reformation, enforcement, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment, may be decided by binding arbitration in City's sole discretion, in accordance with Uniform Oregon Arbitration Act ORS 36.600 et seq. and any additional rules mutually agreed to by both parties. If the parties cannot agree on rules within ten (10) days after the notice of demand, the presiding judge of the Douglas County Circuit Court will establish rules to govern the arbitration. The City shall have the sole discretion as to whether or not dispute will be decided by arbitration rather than through the court process.
- 27.2 A claim by Architect/Engineer arising out of, or relating to this Contract must be made in writing and delivered to the City Manager not less than 30 days after the date of the

occurrence giving rise to the claim. Failure to file a claim with the City Manager within 30 days of the date of the occurrence that gave rise to the claim shall constitute a waiver of the claim. A claim filed with the City Manager will be considered by the Council at the Council's next regularly scheduled meeting. At that meeting the Council will render a written decision approving or denying the claim. If the claim is denied by the Council, the Architect/Engineer may file a written request for arbitration with the City Manager. No demand for arbitration shall be effective until the Council has rendered a written decision denying the underlying claim. No demand for arbitration shall be made later than thirty (30) days after the date on which the Council has rendered a written decision on the underlying claim. The failure to demand arbitration within said 30 days shall result in the Council's decision being binding upon the City and Architect/Engineer.

27.3 Notice of demand for arbitration shall be filed in writing with the other party to the Contract. The demand for arbitration shall be made within the 30day period specified above. The City, if not the party demanding arbitration, has the option of allowing the matter to proceed with binding arbitration or by written notice within five (5) days after receipt of a demand for arbitration, to reject arbitration and require the Architect/Engineer to proceed through the courts for relief. If arbitration is allowed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and the award will not be subject to modifications or appeal except to the extent permitted by Oregon law.

28. Joinder

Notwithstanding any contrary language in other documents or agreements related to services provided by Architect/Engineer pursuant to this Contract, including contracts for construction services, either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact arising out of or related to this Contract and whose presence is required if complete relief is to be accorded. This paragraph applies to any and all claims, disputes, and other matters arising out of, or relating to this Contract, including but not limited those claims, disputes, and other matters subject to litigation or arbitration.

29. Attorney Fees

If any suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this Contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the applicable costs and disbursements. Further, if it becomes necessary for City to retain the services of an attorney to enforce any provision of this Contract without initiating litigation, Architect/Engineer agrees to pay City's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by the losing party.

30. Successors and Assigns; Subcontractors and Assignments

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

31. Limitation of Liabilities

City shall not be liable for (i) any indirect, incidental, consequential, or special damages under the Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. Architect/Engineer shall not be liable for any consequential damages under this Contract.

32. Foreign Contractor

If Architect/Engineer is not domiciled in or registered to do business in the State of Oregon, Architect/Engineer shall promptly provide to the Oregon Department of Revenue and the Corporations Division of the Oregon Secretary of State all information required by those agencies relative to this Contract. Architect/Engineer shall demonstrate its legal capacity to perform the work under this Contract in the State of Oregon prior to entering into this Contract.

33. Confidentiality

Architect/Engineer shall maintain the confidentiality of any of City's information that has been marked as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent Architect/Engineer from establishing a claim or defense in an adjudicatory proceeding. Architect/Engineer shall require similar agreements from City's and/or Architect/Engineer's subconsultants to maintain the confidentiality of information of City.

34. Force Majeure

Architect/Engineer shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, earthquakes, strikes or other labor disturbances, civil commotion or war.

35. Waivers

No waiver by City of any provision of this Contract shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Architect/Engineer of the same or any other provision. City's consent to or approval of any act by Architect/Engineer requiring City's consent or approval shall not be deemed to render unnecessary the obtaining of City's consent to or approval of any subsequent act by Architect/Engineer, whether or not similar to the act so consented to or approved.

36. Severability

Any provision of this Contract which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

37. Headings

The captions contained in this Contract are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

38. Integration and Modification

This Contract, including the attached exhibits referenced in Section B, contains the entire agreement between the parties regarding the matters referenced herein and supersedes all prior written or oral discussions or agreements regarding the matters addressed by this Contract. Any modifications or amendments to this Contract will only be effective when made in writing and signed by authorized parties for each party to this Contract.

39. Authority

The representatives signing on behalf of the parties certify that they are duly authorized by the party for which they sign to enter into this Contract.

40. Certificate of Compliance with Oregon Tax Laws

By executing this Contract, Architect/Engineer certifies under penalty of perjury that Architect/Engineer is, to the best of Architect/Engineer's knowledge, not in violation of any Oregon tax laws described in ORS 305.385(6) and (7).

CITY OF TILLAMOOK _____

By: _____
Authorized Signature

By: _____
Authorized Signature

Title: _____

Date: _____

Date: _____

Exhibit A

Scope of Work

SERVICES AND RESPONSIBILITY OF ARCHITECT/ENGINEER

Phase 1 – Alternative Analysis of Water Transmission Main Route; estimated completion Spring 2023.

Consultant shall prepare and submit an Alternative Analysis for the new water transmission line alignment. The levels of detail that may be required for the Alternatives Analysis are:

- Surveying
- Water pipe material choices
- Work necessary to obtain environmental clearance; creek/river crossings, wetlands, etc.
- Right-of-way or Easements
- Utility impacts
- Seismic issues
- Identification of necessary design exceptions
- Traffic impacts
- Engineer's opinion of probable costs
- Alternative Analysis Decision matrix and City team workshop
- Prepare alternative analysis report narrative along with recommendations

The Consultant shall schedule, and lead a minimum of three (3) workshops with the City team for decision making of the Alternatives for a final route. The Consultant shall also prepare an alternative analysis report narrative.

Phase 2 – Design Acceptance Package (DAP); estimated completion early Fall 2023

- Prepare DAP design sheets on 11"x17" detailing water transmission alignment, typical sections, right-of-way/easement and utility impacts
- Prepare water transmission pipe type, size and location
- Prepare all required permits for environmental clearances
- Prepare traffic control plans
- Prepare erosion and sediment control plans
- Prepare preliminary Engineer's cost estimate for one (1) alternative
- Prepare a utility pothole locate plan and cost estimate including the use of hydro-excavators/vac-trucks
- Prepare a plan to keep customers in water service

Phase 3 – Final Design and Bidding Assistance

Consultant shall provide all engineering services required to prepare a bid package in accordance with all state and federal agencies including Oregon Health Authority and ODOT's policies and procedures.

Consultant shall provide bidding assistance services during the final Plans, Specifications, and Cost estimates (PS&E) process and the advertising period.

Phase 4 – Construction Engineering Phase

Consultant shall provide construction engineering services and services to meet the Business Oregon requirements for federal funds, including but not limited to:

- ~~Provide labor compliance documentation in accordance with Business Oregon requirements.~~
- Provide construction project management and contract administration and documentation for construction of the project.
- Conduct Pre-Construction conference with Construction contractor, City team, and any affected utilities.



- Review and approve (when appropriate) all required construction shop drawings, plans and submittals.
- Perform on-site construction monitoring and observation
- Provide written notification to the City at the first sign of any delays.
- Provide Quality and Quantity documentation in compliance with City and State policies, procedures, and manuals.
- Provide utility coordination
- Prepare documentation and recommend approval to City of construction contract change orders
- Prepare pay notes and provide data for contractor payments
- Provide detailed updates on Consultant and Contractor's progress
- Perform environmental and permit compliance monitoring during construction of the project.
- Perform project post-construction monumentation and associated duties and products.
- Complete and submit as-built plans and drawings in GIS format that's acceptable to the city.
- Prepare and submit final documentation to the City.
- Provide a plan to keep customers in water service in accordance to OHA standards.



Exhibit B

Oregon Public Contracting Requirements

PUBLIC CONTRACTING CODE REQUIREMENTS For ORS 279C Personal Service Contract

1. Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the Work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.
2. Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from Contractor or any Subcontractor in connection with the performance of the Contract shall promptly be paid.
3. Contractor shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
4. Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
5. Contractor shall employ no person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, Contractor shall pay the employee at least time and one-half pay for: 1) all overtime in 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater, except for individuals under personal service contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime; or 2) work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(b)(B) to (G).
6. Pursuant to ORS 279C.520(2), the Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
7. Contractor shall ensure Owner's compliance with all applicable provisions of ORS 279C.527 and OAR Chapter 330 Division 135 regarding green energy technology requirements for new or major renovations of public buildings costing over \$1,000,000.
8. Pursuant to ORS 279C.530(2), all employers, including Contractor, that employ subject workers who work under this contract shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.
9. All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid.
10. The Contract may be canceled at the election of City for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.



11. Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises or a business enterprise that is controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontractors.
12. Contractor certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.
13. In the performance of this Contract, the Contractor shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies, and shall compost or mulch yard waste material at an approved site, if feasible and cost effective.
14. Pursuant to City's Public Contracting Rule 137-049-0880, the City may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the records relating to the Contract.
15. The following notice is applicable to Work involving excavation. "ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503) 232-1987."



Exhibit C

City's Request for Proposals for Architectural/Engineering Services



Exhibit D

Architect/Engineer's Proposal and Schedule of Rates and Charges

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Exhibit D

ARPA/ SLFRF Federal Contract Clauses

1.

Purpose: The purpose of this reference is to assist ARPA grant award recipients by summarizing required contract clauses consistent with the federal Uniform Guidance requirements that are applicable to the State and Local Fiscal Recovery Funds (SLFRF) program as part of the American Rescue Plan Act (ARPA).

As described in this document a “recipient” is a recipient of an APRA funded grant award from Business Oregon.

The SLFRF awards are generally subject to the requirements set forth in **The Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards** (commonly called "Uniform Guidance"). The “Uniform Guidance” is the set of federal rules (administrative requirements, cost principles, and audit guidelines) that apply to federal money. This includes requirements such as the treatment of eligible uses of funds, procurement, and reporting requirements. Please see the SLFRF Compliance and Reporting Guidance page 12 for full Award terms and conditions.

It is the recipient’s responsibility to ensure all SLFRF award funds are used in compliance with these requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water and sewer infrastructure projects.

Contract Clause Checklist

Directions:

Appendix II of 2 CFR 200 (The Uniform Guidance) outlines the contract provisions that you must place in contracts with your contractors, and in contracts with subrecipients (if any). The checklist below contains these standard clauses for inclusion in contracts needed to utilize ARPA funds.

Clauses for All Contracts:

Creating a contract that complies with ARPA requirements must include the below sections as verbatim:

Contractor must be registered in SAM.gov. - The Contractor shall register in the System for Award Management (SAM), which is the primary registrant database for the U.S. Federal Government and shall update the information at least annually after the initial registration and maintain its status in the SAM through the Term of this Agreement. Information regarding the process to register in the SAM can be obtained at Sam.gov

Whistleblower - Contractor receiving ARPA funds shall under or through this contract post notice of the rights and remedies provided to whistleblowers under No Fear Act Pub. L. 107-174. 29 CFR § 1614.703 (d).

Inspections; Information - Contractor shall permit, and cause its subcontractors to allow the State of Oregon, the federal government and any party designated by them to:

- Examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project.
- Inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursement, contracts, and any other matters relating to the Project, and to its financial standing, and shall supply such reports and information as reasonably requested.
- Interview any officer or employee of the Contractor, or its subcontractors, regarding the Project.



- Equal Opportunity** - Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

- Copeland "Anti-Kickback" Act** - Contractor shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- Debarment and Suspension (Executive Orders 12549 and 12689)** - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- Prohibition on purchasing telecommunications or surveillance equipment, services, or systems.** As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Prohibitions extend to the use of Federal funds by recipients and subrecipients to enter into a contract with an entity that "uses any equipment, system, or service that uses covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the System for Award Management exclusion list.

- Preference to United States made goods.** - As appropriate and to the extent consistent with law, the contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section:
 - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Additional Clauses for Contracts Over \$10,000:

Creating a contract over \$10,000 that complies with ARPA requirements must include the additional below sections as verbatim:

- Procurement of recovered materials over \$10,000.** - The Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy



and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Termination for cause and for convenience - Contractor shall address termination for cause and for convenience, including the manner by which it will be affected and the basis for settlement. The Contract Owner shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. The Contract Owner shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

Additional Clauses for Contracts Over \$100,000:

Creating a contract over \$100,000 that complies with ARPA requirements must include the additional below section(s) as verbatim:

Certification form located in Appendix I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Note: Only include for contracts that involve the employment of mechanics or laborers. The Contract Work Hours and Safety Standards Act requires all contractors—prime and sub—to pay laborers and mechanics performing on a federal service contract and federal and federally assisted construction contract over \$100,000, 1.5 times their basic rate of pay for all hours worked over 40 in a workweek. Employers are liable to employees for these unpaid wages. The failure of a contractor to comply with this Act may also result in liability under the False Claims Act. Employees who are due unpaid wages under the Contract Work Hours and Safety Standards Act may file a complaint with the Wage and Hour Division within the U.S. Department of Labor. The DOL may then enforce the provisions of the Act against violators.

Additional Clauses for Contracts Over \$150,000:

Creating a contract over \$150,000 that complies with ARPA requirements must include the additional below section(s) as verbatim:

Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Additional Clauses for Contracts Over \$250,000 (the simplified acquisition threshold as of 2022):

Creating a contract over \$250,000 that complies with ARPA requirements must include the additional below section(s) as verbatim:

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41



U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Upon any breach of this Agreement by Contractor, the Contract Owner shall have all remedies available to it both in equity and/or at law.

**Certification Regarding Lobbying
(Awards to Contractors and Subcontractors in Excess of \$100,000)**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signed : _____
Title: _____
Date: _____